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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/872,387	06/01/2001	John Gilbert	46948-00012UPST	2879

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EXAMINER

TRUONG, CAMQUY

ART UNIT	PAPER NUMBER
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2127

DATE MAILED: 11/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/872,387	Applicant(s) GILBERT ET AL.	
	Examiner Camquy Truong	Art Unit 2127	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-22 are presented for examination.
2. The abstract is objected to because it should on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. It should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details. The abstract is too long. Correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-7, 10-18 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kubo (US. 5,881,284) in the view of Tabuchi (US 5,923,875).
4. As to claims 1 and 12, Kubo teaches the invention substantially as claimed including: a method of managing a plurality of communication devices, (col. 3, lines 60-63), said method comprising step of:

Forming a queue of data access jobs to be run on said plurality of communication devices (col. 3, lines 13-15 and lines 60-62);

Executing said data access jobs in accordance with said queue (col. 3, lines 61-63; col. 6, lines 22-25); and

Controlling said queue in order to optimize a usage efficiency of said plurality of communication devices (col. 3, lines 15-18; col. 6, lines 22-25; col. 7, lines 8-10).

5. Kubo does not explicitly teach that the communication device being adapted to be cleared and reset to default state if a communication failure occurs a predetermined number of times. However, Tabuchi teaches communication device being adapted to be cleared and reset to default state if a communication failure occurs a predetermined number of times (col. 5, lines 49-64; col. 6, lines 21-28).

6. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of Kubo and Tabuchi because Tabuchi's communication device being adapted to be cleared and reset to default state if a communication failure occurs a predetermined number of times would provide a way to reduce the inefficiency and inflexibility by eliminating unprocessed jobs being piled up on one group of computers and on the other hand some computers have completed jobs and are waiting for job assignment.

7. As to claims 2 and 13, Tabuchi teaches controlling said queue is accomplished over the Internet (col. 1, lines 38-41).
8. As to claims 3 and 14, Tabuchi teaches controlling said queue includes rescheduling unsuccessful data access jobs in said queue (col. 2, lines 51-55; col. 6, lines 21-28; col. 12, lines 34-40).
9. As to claims 4 and 15, Tabuchi teaches compiling failure data for said unsuccessful data access job (col. 2, lines 35-38; col. 12, lines 5-9).
10. As to claims 5 and 16, Tabuchi assigning a score to one or more of said plurality of communication devices based on said compiled failure data (col. 2, lines 35-37; col. 5, lines 49-55).
11. As to claims 6-7 and 17-18, Tabuchi teaches permanently taking off-lines each one of said plurality of communication devices scoring higher than a second predetermined score (col. 2, lines 36-39; col. 5, lines 49-53).
12. As to claims 10-11 and 21, Kubo and Tabuchi do not explicitly teach modem and network interface card. However, they are well known in the art that modem and network interface card are communication device that acts as an

interface between a computer or terminal and a communications channel. It would have been obvious to one of ordinary skill in the art at the time the invention was made that that modem and network interface card would provide network access to a computer or terminal easier.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 8-9, 19-20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kubo (US. 5,881,284) in the view of Tabuchi (US 5,923,875), as applied to claims 1 and 12 above, and further in view of Nevarez et al (US 6,189,103 B1).

14. As to claim 22, Kubo teaches the invention substantially as claimed including: a method of managing a plurality of communication devices by a control system, (col.3, lines 60-63), comprising step of:

Forming a queue of data access jobs to be run on said plurality of communication devices (col. 3, lines 13-15 and lines 60-62);

Executing said data access jobs in accordance with said queue (col. 3, lines 61-63; col. 6, lines 22-25);

Controlling said queue in order to optimize a success rate of said data access jobs wherein said control of said queue is accomplished over the Internet (col. 3, lines 15-18; col. 6, lines 22-25; col. 7, lines 8-10);

Compiling failure data for said unsuccessful data access jobs and assigning a score to one or more of said plurality of communication devices based on said failure data (col. 2, lines 35-38; col. 12, lines 5-9);

Taking off-lines each one of said plurality of communication devices scoring higher than a second predetermined score (col. 2, lines 36-39; col. 5, lines 49-53); and

Resetting any one of said plurality of communication devices scoring higher than a predetermined score (col. 2, lines 51-58; col. 6, lines 21-28).

15. Kubo and Tabuchi do not explicitly teach logging and allowing manual control of one or more said data access jobs. However, Nevarez teaches logging and allowing manual control of one or more said data access jobs (col. 5, lines 14-28). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of Kubo, Tabuchi and Nevarez because Nevarez's logging and allowing manual control of one or more of said data access jobs would improve the integrity of Kubo and Tabuchi's system by allowing only access to data access job by logging and allowing manual control system.

16. As to claim 8-9 and 19-20, Nevarez teaches logging and allowing manual control of said data access job (col. 5, lines 14-28).

Conclusion

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Camquy Truong whose telephone number is (571) 272-3773. The examiner can normally be reached on 8AM – 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on 571-272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-3756.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIP. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIP system, contact the Electronic Business Center (EBC) at 866-217-9197(toll-free).

Camquy Truong

November 12, 2004



**MENG-AL T. AN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100**